Filed 8/14/12 P. v. Morgan CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. DEANDRE LEE MORGAN, Defendant and Appellant.	B237870 (Los Angeles County Super. Ct. No. KA088675)

APPEAL from a judgment of the Superior Court of Los Angeles County, Tia Fisher, Judge. Affirmed.

Linn Davis, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Respondent.

Appellant Deandre Lee Morgan was convicted of carjacking and evading an officer. In his first appeal, we conditionally reversed the judgment of conviction, remanded the matter with directions to the trial court to resolve appellant's motion for a new trial pursuant to the correct legal standard, and directed that the judgment be reinstated if the court denied the new trial motion. Upon remand, the court denied the motion. In the instant appeal, appellant's court-appointed counsel has filed an opening brief raising no issues. Following our independent examination of the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we conclude that no arguable issues exist, and affirm.

RELEVANT PROCEDURAL AND FACTUAL BACKGROUND

The history of this case preceding the instant appeal is stated in our previous opinion (*People v. Morgan* (May 16, 2011, B227001) [nonpub. opn.]):

"Appellant was charged in a two-count information with felony carjacking ([Pen. Code], § 215, subd. (a)) and felony evading an officer (Veh. Code, § 2800.2, subd. (a)). He pled not guilty to both counts, and a jury trial on the charges commenced on June 29, 2010.

"During trial, the prosecution presented evidence that the victim, Frankie Herrarte, had met with appellant on two separate occasions to sell Herrarte's car. Appellant was accompanied by Alan Robinson on the first occasion, and by another man on the second occasion. The parties did not reach an agreement on the sale of the car.

"On the night of the crime, Robinson had called Herrarte to ask him to meet Robinson at a restaurant in Covina because Robinson was interested in buying the car. Robinson wanted to take the car on a test drive, so Herrarte suggested that he would drive the car to another location and Robinson could drive it back to the

restaurant. On the way to the other location, Robinson suggested that they continue to another restaurant nearby.

"After they had pulled over at the other restaurant, Robinson asked to look at the car's engine and Herrarte agreed. While they were looking at the engine, a man dressed in black with a bandana covering his face approached them. He had the same build as appellant, but Herrarte could not recognize his voice. The man first robbed Robinson, and then carjacked the vehicle. He was wielding a black handgun that he pointed at Herrarte during the entire incident.

"After the man entered the car, Herrarte ran away and called the police. Covina Police Officer Mario Corona was on patrol that night near the restaurant, and he noticed the car speeding by his location. He turned on his police lights and pursued the vehicle. The car did not stop, and a chase ensued until the car crashed into another vehicle. When Officer Corona arrived at the traffic accident, he did not see anyone inside the vehicle or running away from the vehicle. He was able to recover a toy black pellet handgun and a red baseball cap nearby. No forensic evidence, such as fingerprints or DNA, could be collected from the carjacked vehicle, the toy gun, or the baseball cap.

"Covina Police Detective Daniel Regan was assigned to the case, and he determined that appellant was likely involved. Detective Regan asked appellant to come to the police station for an interview, and appellant did so. Appellant initially denied being involved, but after being told that the police had cell phone tracking information that contradicted his story, he admitted his original denial was a lie. Regan then arrested appellant, and advised him of his rights. Appellant asked Detective Regan if the detective could promise that his family would not be hurt if he told the detective about another person who was involved. Although the

detective did not promise anything, appellant agreed to speak with the detective. A recording of this interview was played for the jury.

"In the interview, appellant admitted that he had agreed to carjack the vehicle with Robinson. On the night of the carjacking, however, when Robinson came to pick him up to drive him to the planned site of the carjacking, Robinson was accompanied by a black male named 'T,' whom appellant did not recognize. Appellant was surprised by T's involvement, and he told Robinson and T that three people were not necessary to do a carjacking and he would just wait near a spot where they had planned to strip the vehicle. Robinson and T then dropped appellant off near the location, and appellant gave T his phone because T wanted to be able to call Robinson after he had stolen the car. Appellant waited at the location until he heard a helicopter circling nearby and saw T walking down the street. T told appellant that things went badly, returned appellant's phone, and left.

"Appellant also admitted that the toy gun and the baseball cap belonged to him, but claimed he had left both items in Robinson's car. The toy gun had been left in the car a long time ago.

"At the close of the prosecution case, defense counsel moved for an acquittal pursuant to [Penal Code] section 1118.1 on the basis of insufficient evidence. The trial court denied the motion.

"During the defense case, appellant testified that he thought T was a gang member. When he learned of T's involvement, he wanted to back out of the carjacking. He told Robinson and T that he did not need to be present during the carjacking in order to get out of the car.

"Appellant left the baseball cap because he was worried it was the wrong gang color for the neighborhood where they had dropped him off. He left his cell

phone because neither Robinson nor T had a phone and they needed it to communicate during the carjacking.

"Appellant stated that he was not completely honest with Detective Regan during the taped interview because the detective could not promise him protection. For example, he did not tell the detective that he had abandoned the plan completely because he feared retaliation by T.

"After hearing all the testimony, the jury convicted appellant on both counts. Prior to sentencing, defense counsel orally moved for a new trial. The following colloquy then occurred:

"[Defense counsel]: And I would ask the court to sit as a 13th juror in this matter and to make a determination as to his guilt or innocence irrespective of the jury's findings.

"[Trial court]: No, I'm not going to do that. I'm not going to--the jury was the fact-finder in this particular case. And the issue is whether there was sufficient evidence. If you would like to cite some case law where the court can completely disregard the jury's verdict, forget we even had a jury trial, and I could decide the case as a judge in a court trial, I would be interested in hearing that.

"[Defense counsel]: Maybe I didn't state it correctly. I was asking the court to sit as the 13th juror in this matter and a motion for a new trial."

"After the motion was submitted on the evidence presented at trial, the court ruled: [¶] 'The motion is denied. I listened to the testimony. I was the judge in the trial. I have every reason to believe that your client received a fair trial both from the standpoint of evidentiary rulings as well as the jury rendering a just verdict based on the jury's belief unanimously that the People have proven the case beyond a reasonable doubt relative to both the carjacking as well as the evading. Mr. Morgan testified. It's clear from the verdict that the jury made a decision as a

matter of their fact-finding that they didn't believe his testimony. That's what juries do. That's what they are entitled to do. That's why we have jury trial[s]. And they rendered their verdict . . . .' [¶] The court then sentenced appellant to three years and eight month[s] in state prison as follows: the low-term of three years on the carjacking count, and a one-third the mid-term, or eight months, on the evasion count." (*People v. Morgan*, *supra*, [pp. 2-7].)

In appellant's first appeal, we concluded that the trial court, in denying the new trial motion, conducted no independent review of the evidence, as required under Penal Code section 1181, subdivision 6. (*People v. Morgan*, *supra*, [p. 7].) We stated: "Because Herrarte could not identify the carjacker and appellant was not arrested at the location of the traffic accident, the case rested entirely on the credibility of appellant's testimony that he had abandoned the carjacking plan. The trial court never indicated whether it believed appellant." (*Id*. [at pp. 7-8].) We thus conditionally reversed the judgment and remanded the matter to the trial court to consider the new trial motion under the correct legal standard. (*Id*. [at p. 8].)

Upon remand, the trial court reviewed the evidence at trial, including appellant's testimony, and concluded that appellant "was lying for a lot of different reasons." The court thus denied appellant's motion for a new trial and reinstated his sentence. This appeal followed.

DISCUSSION

After an examination of the record, appellant's court-appointed counsel filed an opening brief raising no issues and requesting this court to review the record independently pursuant to *Wende*. In addition, counsel advised appellant of his right to submit by supplement brief any contentions or argument he wished the

court to consider. Appellant has neither presented a brief nor identified any potential issues. Our examination of the entire record establishes that appellant's counsel has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d at p. 441.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.